CF0000089834

GA 990/90 (02)

XII-P 3/(Jail)
C. R.-2000 6-88

Regd

APPEAL OF PRISONER

No. 2376. Name कुधराम

Father's name मरहू राम जाति: उरांव, साकिन कोदोपारा, थाना: लैलूंगा जिला रायगढ़ (म०प्र०)

Residence जिला रायगढ़ (म०प्र०) Age 30 वर्ष (पुरुष)

Sentenced आजन्म कारावास (I) on 25-8-1990

Under section ~~302 आई०पी०सी०~~ आजन्म कारावास (II) 302 आई०पी०सी० by माननीय द्वितीय अतिरिक्त सत्र न्यायाधीश रायगढ़ (म० प्र०) ① स० प्र० क्र० - 3/89, ② स० प्र० क्र० 57/89

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 25.8.1990

2 Date of which copy received 4.9.1990

3 Date on which Appeal sent 5.9.1990

4 whether the prisoner wishes to be represented or not – Yes / No.

Received on 12 SEP 1990 Registration No. 5417 High Court of Madhya Pradesh JABALPUR

No. 2376. Name कुधराम पुत्र मरहू राम

Continued in केन्द्रीय जेल Jail रायपुर (म० प्र०)

No. 857/Octagan/1 Dated 5.9.1990 198

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अतिरिक्त पैजीयक महोदय मध्य प्रदेश उच्च न्यायालय जबलपुर

to gather which a copy of order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent

Date of receipt in C. J. M.'s office

Date of receipt record to accompany

Memo of Appeal of the Appellate court

No Dated 198

Forwarded to the

(26) A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.990/1990

Budhram

-Versus-

State of Chhattisgarh

Judgment for consideration

Sd/-
Dilip Raosaheb Deshmukh
Judge

Hon'ble Shri Justice Fakhruddin

9.0

Sd/-
Fakhruddin
Judge

Post for 16.08.2005

Sd/-
JUDGE
.08.2005

(27)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.990/1990

Budhram

-Versus-

State of Chhattisgarh

CORAM: HON'BLE SHRI FAKHRUDDIN AND HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Appellant by Smt.Nisha Chaturvedi, Advocate.

State by Shri Akhil Mishra, P.L.

J U D G M E N T

(Delivered on 16.08.2005)

Per Dilip Raosaheb Deshmukh, J.

This appeal is directed against the judgment dated 25 August 1990 delivered by Shri Dinesh Chandra Dubey, 2nd Additional Sessions Judge, Raigarh in sessions trial No.5/89 whereby the appellant was convicted under Section 302 I.P.C. for committing murder of Budhni Bai on 30.08.1988 in village Kodopara and was sentenced to undergo imprisonment for life.

2. Briefly stated the prosecution story is that Khuyuram had gone to Punjab for earning his livelihood. On 29.8.1988 his parents had given a dinner to celebrate his return from Punjab. Appellant Budhram was also invited. Liquor was consumed alongwith food. In the evening at 4.00 P.M, the appellant Budhram invited everybody for party. Budhni Bai, mother of Khuyuram also went to the house of the appellant. After the party, Anganuram, Kariyo Bai and Santosh alongwith the appellant and Khuyuram were

returning home. During talks with Khuyuram, the appellant got annoyed and he dealt 2 – 3 fist blows to Khuyuram. There was a scuffle in which Khuyuram felled the appellant on the ground. Vijay and Anganu separated the appellant and Khuyuram and locked the appellant inside the house of one Budhna Uraon. However, after sometime the appellant somehow managed to break open the door and picking an axe from the house of Budhna chased Khuyuram but Khuyuram ran away. Finding Budhni Bai, mother of Khuyuram, alone, the appellant struck twice with the Tangia over the back of occipital region and the back of neck of Budhni Bai as a result of which she died on the spot. After sometime, the appellant went to Santosh and asked him the whereabouts of Khuyuram. When Santosh asked the appellant to return to his home, the appellant dealt a Tangia blow on the neck of Santosh who fell down and succumbed to the injury soon after.

3. Khuyuram lodged F.I.R. in Police Station Sanna vide Ex.P.17. Panchnama of the dead body of Budhni Bai was prepared vide Ex.P.6 by Assistant Sub-Inspector S. S. Dhruv P.W.16. Dr. P.L.Gupta, Block Medical Officer, P.W.12 conducted the autopsy and found one incised wound over back of occipital region mid line 3" x 1" x ½" with big blood clots inside the wound. Margins were regular. Underneath the occipital bone was fractured into pieces. Another incised wound over back of neck just half inch below the above wound size 3½" x ½" x ½" with margins regular. All subeutaneous tissue and muscles underneath these wounds were cut. Big blood clots were present and margins were regular. He opined that all these injuries were

grievous in nature, ante mortem and sufficient to cause death instantaneously and were caused by a sharp and heavy object within 48 hours of examination. In his opinion, death was caused due to haemorrhage and shock leading to syncope and was homicidal in nature.

4. During investigation, on the basis of his memorandum Ex.P.10, one Tangia was seized vide Ex.P.11 from the appellant. Vide Ex. P.12 one yellow polyester, one Sando Banian (vest) with blood like stains and one lungi with blood like stains were seized from the appellant. These articles were sent for chemical examination to the Chemical Examiner who vide report Ex.P.19 found blood on the Tangia as well as on the clothes of the appellant. These articles were also sent to Serologist and Chemical Examiner of Government of India for examination. However, the bloodstains on these articles were found to be disintegrated and their origin could not be determined.

5. After completion of investigation, the appellant was prosecuted under Section 302 I.P.C. The appellant claimed trial, pleaded innocence in defence and led no evidence. The trial Judge relying on the testimony of Khuyuram P.W.5, Viviyamati P.W.6, Jethuram P.W.7 and the testimony of Dr. P. L. Gupta P.W.12 convicted the appellant for committing murder of Budhni Bai.

6. Learned counsel for the appellant has assailed the conviction of the appellant mainly on the ground that the testimony of ocular witnesses is not reliable and does not bring home the guilt of the appellant under Section 302 I.P.C. On the other hand, the

Government Advocate has supported the judgment of the trial Court.

7. We have considered the rival contentions and also perused the record of the lower Court. Khuyuram P.W.5 is the son of deceased Budhni Bai. He has deposed that on his return from Punjab he had gone with the appellant to his house where the appellant had offered liquor to him. After consuming liquor while they were returning, the appellant suddenly got annoyed and hit him thrice with fists. At this juncture, his mother Budhni Bai was going ahead of them. There was a scuffle in which Khuyuram and Budhram both fell down. Jethu Lohar and Budhna separated the appellant and locked him in the house of Budhna. While Khuyuram P.W.5 and his mother were proceeding towards house, the appellant suddenly emerged from the house of Budhna with an axe whereupon Aanganu asked Khuyuram to run away. Both the brothers started running in separate directions. It was then that the appellant struck Budhni Bai by the Tangia on the neck from the back whereupon Budhni fell down and died on the spot. So far as the assault by the appellant by axe on Budhni Bai is concerned, the testimony of Khuyuram is wholly unrebutted in cross-examination. Khuyuram P.W.5 had also mentioned the abovementioned facts in the F.I.R. Ex.P.17 lodged on 31.08.1998. Learned counsel for the appellant has contended that Khuyuram is the son of the deceased, and therefore, an interested witness and his testimony cannot be relied on. It is fairly well settled in law that the evidence of a witness related either to the deceased or the injured is not to be automatically rejected notwithstanding the fact

that it is cogent, credible and trustworthy. Applying this principle laid down by the Apex Court in *R. Prakash v. State of Karnataka,* reported in **A.I.R. 2004 S.C. 1812,** we find that the testimony of Khuyuram inspires confidence, his presence at the place of occurrence is natural since he was returning with the appellant after consuming liquor at his house. Therefore, the credible testimony of Khuyuram P.W.5 cannot be rejected merely on the ground that he is an interested witness.

8. Viviyamati P.W.6 has also deposed that seeing the appellant running with the axe she got frightened and hid inside her house and after some time she saw that Budhni Bai was lying dead near the Imli tree. This suggestion has come totally from the defence in her cross-examination. Jethuram P.W.7 has also deposed that Khuyuram and Budhram were intoxicated and there was a scuffle between them. He along with Budhna separated the appellant and locked him inside the house of Budhna. After some time, he found that the dead body of Budhni Bai was lying at a distance from his house with injury at the back of head and blood oozing from the injury. Sakharam P.W.8 has also deposed that Viviyamati, daughter of Marhuram had told him that Budhram had killed Budhni Bai by assaulting her by a Tangia. The facts narrated above have not been rebutted in cross-examination of these witnesses.

9. Bhola Prasad Gupta P.W.13 has also deposed that he saw the accused coming with an axe and abusing filthily. The accused came to his shop and sat on the board and banged the Tangia

twice or thrice on the board in utter annoyance. After some time the accused went towards his house.

10. The testimony of Dr. P.L.Gupta P.W.12 establishes beyond doubt that the deceased Budhni Bai had sustained one incised wound over back of occipital region mid line 3" x 1" x ½" with big blood clots inside the wound. Margins were regular. Underneath the occipital bone was fractured into pieces. Another incised wound over back of neck just half inch below the above wound size 3½" x ½" x ½" with margins regular. All subcutaneous tissue and muscles underneath these wounds were cut. Big blood clots were present and margins were regular. He opined that all these injuries were grievous in nature, ante mortem and sufficient to cause death instantaneously and were caused by a sharp and heavy object within 48 hours of examination. In his opinion, death was caused due to haemorrhage and shock leading to syncope and was homicidal in nature. This testimony establishes beyond doubt that Budhni Bai had died a homicidal death.

11. Sub-Inspector K.N.Tiwari P.W.15 has proved the seizure of Tangia from the appellant vide Ex.P.11 on the basis of the memorandum of the appellant Ex.P.10. The report of the Forensic Science Laboratory Ex.P.10 establishes that blood stains were found on the Tangia.

12. Considering the prosecution evidence in its totality, we find that it has been established beyond the shadow of doubt that the appellant-Budhram had committed murder of Budhni Bai by means of Tangia. True, that it has emerged in evidence that the appellant was intoxicated but there is nothing on record to show

that liquor had been administered to the appellant against his will so as to give him benefit of Section 85 I.P.C. The evidence also clearly shows that the appellant was capable of knowing the nature of his act. No explanation has been offered by the accused for his brutal act in committing murder of Budhni Bai who in no way provoked him. The evidence led by the prosecution shows that the accused appellant was in a murderous rage to kill Khuyuram and not finding him he did not have the slightest hesitation in eliminating Budhni Bai.

13. Thus, after careful consideration of the evidence led by the prosecution, we are of the considered opinion that the prosecution has brought home the guilt of the appellant under Section 302 I.P.C. for committing murder of Budhni Bai beyond all reasonable doubt. We therefore affirm the conviction of the appellant under Section 302 I.P.C. and also sentence awarded thereunder.

14. Consequently, the appeal is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge